



County Technical Assistance Service

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Intoxicating Liquors

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Intoxicating Liquors

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Intoxicating Liquors - Traffic in Intoxicating Liquors

It is the duty of all sheriffs and other peace officers charged with enforcing the laws of the state to enforce the provisions of Title 57, Chapter 3, dealing with the trafficking of intoxicating liquors. T.C.A. § 57-3-410.

Intoxicating Liquors - Beer and Alcoholic Beverages

The police and penal provisions of Title 57, Chapter 5, dealing with beer and alcoholic beverages containing less than 8 percent alcohol are to be enforced by all sheriffs, deputy sheriffs, police officers and members of the state highway patrol. In addition, such officers, along with inspectors, agents, representatives or officers appointed by the commissioner of revenue, are charged with enforcing the revenue provisions of this Chapter 5. T.C.A. § 57-5-202(c).

Intoxicating Liquors - Destruction of Stills and Paraphernalia

It is the duty of all sheriffs and deputy sheriffs to search for, seize and capture all:

1. Illicit distilleries, stills and worms, distilling and fermenting equipment and apparatus, and other paraphernalia connected therewith or used or to be used in the illicit manufacture of intoxicating liquors;
2. Raw materials and substances connected with or to be used in the illicit manufacture of intoxicating liquors; and
3. Containers connected with or used in the packaging of illicitly manufactured intoxicating liquors.

T.C.A. § 57-9-101(a).

It is the duty of all sheriffs and deputy sheriffs to destroy any and all whiskey, beer, or other intoxicants found at or near illicit distilleries or stills except with respect to intoxicating liquors upon which federal tax has been paid as provided in T.C.A. § 57-9-115. Further, it is the duty of all sheriffs and deputy sheriffs capturing such illicit distilleries, stills, distilling and fermenting equipment and apparatus, and other paraphernalia, to summarily destroy and render the property useless. T.C.A. § 57-9-101(b) and (c). Any intoxicants or other articles of personal property destroyed under the authority of T.C.A. § 57-9-101 must be destroyed in the presence of at least two credible witnesses. Within five days after the destruction, the officer destroying the intoxicants or other articles of personal property must file a written statement listing all the items destroyed, signed by the officer and the witness or witnesses thereto, with the circuit or criminal court clerk of the county where seized and, in addition, must file a copy of the written statement with the Alcoholic Beverage Commission. T.C.A. § 57-9-101(c).

It is the duty of all sheriffs and deputy sheriffs to arrest any and all people implicated, aiding or abetting in the manufacture of intoxicating liquors and take them before the proper officials and have them tried upon such charge. T.C.A. § 57-9-102. *See Hagan v. Black*, 17 S.W.2d 908, 909 (Tenn. 1929) (County court had no power to adopt resolution offering to pay reward to officers for conviction of liquor law violators.).

Intoxicating Liquors - Seizure of Illegal Liquor

Pursuant to T.C.A. § 57-9-103, it is the duty of all sheriffs and deputy sheriffs to take into their possession any intoxicating liquors, including wine, ale, and beer, that have been received by or are in possession of or are being transported by any person in violation of any law of this state. Furthermore it is the duty of the sheriff to hold such liquors pending further orders of the court. *Casone v. State*, 140 S.W.2d 1081, 1082 (Tenn. 1940). When the sheriff seizes liquors under his general authority as a law enforcement officer and not as an agent or representative of the commissioner of revenue, the liquor remains in the sheriff's custody until it is determined by the court whether or not the liquor was legally in the possession of the person from whom it was seized. If the court determines that the liquor is contraband goods under the statute, then the court may entertain an application from the commissioner of revenue asserting his jurisdiction to possess the liquors and sell them for the benefit of the treasury. *Casone v. State*, 140 S.W.2d 1081, 1082 (Tenn. 1940). Note: The enactment of Title 57, Chapter 3 did not repeal in toto the provisions of T.C.A. § 57-9-103 *et seq.* Primarily, T.C.A. § 57-3-411 is a revenue measure to enforce payment of the liquor tax. *Casone* at 1082.

Every officer, other than the sheriff, who seizes intoxicating liquors, must within five days of the seizure deliver the intoxicating liquors to the sheriff of the county wherein the liquor was seized. Upon delivery, the sheriff must give the officer a written receipt for the liquor showing the kind and quantity of intoxicating

liquors delivered, and the name or names of the person(s) from whom the intoxicating liquors were taken if the name(s) are known to the officer. T.C.A. § 57-9-106. See *Nichols v. State*, 181 S.W.2d 368 (Tenn. 1944). In addition, the seizing officer must, within five days after taking possession of any intoxicating liquors, file a written statement with the circuit or criminal court clerk of the county wherein the liquor was seized showing the kind and quantity of intoxicating liquors taken and, if known, the name or names of the person from whom the liquor was taken. T.C.A. § 57-9-104. Failure to file the required statement negates the seizure. *State v. Bellamy*, 1986 WL 10567 (Tenn. Crim. App. 1986). The filing of this statement is the only notice that is required to be given to the person from whom the liquors were taken, where the person resides within the jurisdiction of the court or where the person was arrested at the time of the seizure. T.C.A. § 57-9-109. Any person claiming an interest in the seized liquors must file a petition in the circuit or criminal court of the county in which the liquors were seized within 10 days after the filing of the statement showing the seizure. T.C.A. § 57-9-111. See *Nichols v. State*, 181 S.W.2d 368 (Tenn. 1944). If the sheriff or other officer seizing the liquor does not know the name of the person transporting, receiving or possessing the intoxicating liquors, the sheriff or other officer seizing the liquor must certify such fact in the statement required by T.C.A. § 57-9-104 and the clerk of the circuit or criminal court must give notice to whom it may concern by posting a notice at the courthouse door setting forth in substance that such liquors have been seized in accordance with the law and notifying all persons claiming the liquor to do so within 30 days from the date of the posting of the notice. If a claim is not filed within the prescribed time, the seized property will be forfeited and disposed of as provided by law. T.C.A. §§ 57-9-110 and 57-9-111.

It is the duty of the sheriff to safely keep in his or her possession all intoxicating liquors, either taken by the sheriff or delivered to the sheriff, until ordered by the court to dispose of the liquor. T.C.A. § 57-9-107. Pursuant to T.C.A. § 57-9-108, at each term of the circuit or criminal court, the sheriff must deliver to the circuit or criminal court judge a written statement showing all the intoxicating liquors in the sheriff's possession, setting forth the kind and quantity of the liquor and the name of the person from whom the liquor was taken if the name of the person is known to the sheriff. If the sheriff does not know the name of the person, the statement must indicate the date of the posting of the notice required by T.C.A. § 57-9-110. The court may not order the sale or destruction of any of the liquors seized until the time for filing petitions alleging ownership thereof or an interest therein has elapsed. T.C.A. § 57-9-119. When any person claims an interest in any seized liquor the court shall hear the claim without a jury and determine whether the person is entitled to the return of the liquor. However, no person is deemed to have any property right in any intoxicating liquors transported, received, or possessed in violation of the laws of this state. If the court, upon hearing any petition alleging ownership of or an interest in intoxicating liquors, ascertains that the liquor has been received, transported or possessed in violation of any law of this state, the court shall direct the sale or destruction of the liquor by the sheriff as provided by law. T.C.A. § 57-9-114. See *Canepari v. State*, 89 S.W.2d 164 (Tenn. 1936); *Ambrester v. State*, 110 S.W.2d 332 (Tenn. 1937); *Cassone v. State*, 140 S.W.2d 1081 (Tenn. 1940); and *Alcoholic Beverage Comm'n v. Simmons*, 512 S.W.2d 585 (Tenn. 1973).

The court must order the destruction of seized liquor that does not have a federal stamp on the bottle or package, or the court may order it turned over to federal authorities for evidence. If the seized liquor has a federal tax stamp but is not fit for consumption, the court shall order it to be destroyed. T.C.A. § 57-9-117. Seized liquor upon which the federal tax has been paid must be turned over to the Alcoholic Beverage Commission (ABC) for public sale by the commissioner of general services as contraband in accordance with the provisions of Title 57, Chapter 9, Part 2. T.C.A. § 57-9-115(a).

It is the duty of the sheriff to notify the ABC in writing within 10 days after the seizure of intoxicating liquors, describing the brands and quantity, and to turn over the liquor to the ABC at the time and place designated by the ABC. It is the responsibility of the ABC to provide transportation and storage for the liquor. In the event the ABC requests the sheriff to transport the liquor, all expenses incurred by the sheriff in the transportation of the liquor is borne by the ABC, and the sheriff is allowed the same mileage fee as for transporting prisoners, in addition to the other actual cost of transportation. Each sheriff, deputy sheriff or constable of any county or any police officer of any municipality who has seized and confiscated any intoxicating liquors must make an itemized list of such beverages, showing the quantity, brand, name and size of bottle, and must deliver a signed copy of the itemized list to the ABC at the time the beverages are delivered or turned over to the ABC for disposal. The agent or representative of the ABC receiving the beverages must likewise issue a receipt to the officer for the beverages. A copy of the list of beverages prepared by the officer making the seizure and confiscation must be delivered by the officer to the county mayor of the county if the seizure is made by a county officer, and a copy must be furnished to the mayor of the municipality if the seizure is made by a municipal officer. The ABC likewise must furnish the

county mayor or city mayor with a copy of the list of beverages which it has received from the particular law enforcement officer. T.C.A. § 57-9-115.

All money received from the sale of the intoxicating liquors is deposited in the general fund of the state treasury provided that, in the case of all liquor captured or confiscated by a police officer of any incorporated municipality, the funds derived from the sale of the liquor, less 10 percent to be retained by the state for costs of administration, must be turned over to the municipality served by the police officer and provided further, that in the case of all liquor captured or confiscated by the sheriff, deputy sheriff or constable of any county, the funds derived from the sale of the liquor, less 10 percent to be retained by the state for costs of administration, must be turned over to the county served by the sheriff, deputy sheriff or constable. T.C.A. § 57-9-115(f). It is the duty of the sheriff to keep separate inventories of liquor captured by police officers and liquor captured by other officers so that the funds derived from the sale of the liquor may be properly divided between the county and incorporated city, town or municipality. T.C.A. § 57-9-118.

Any sheriff or deputy violating any of these provisions is guilty of a Class C misdemeanor and shall forfeit their office and be ineligible to reappointment or reelection to the same office for a period of five years. T.C.A. § 57-9-121. See *Mathis v. State*, 46 S.W.2d 44 (Tenn. 1932) and *Broyles v. State*, 341 S.W.2d 722 (Tenn. 1960).

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